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Profs want U.S. to pay fees in CIA suit

By Erik Kriss
Staff Writer

Two Syracuse University professors are demanding the federal government pay their fees for representing the campus newspaper in an unsuccessful lawsuit against the Central Intelligence Agency.

Eight years after student journalists at the Daily Orange began attempts to get information about CIA activities on campus, their attorneys expect to file perhaps their last motion.

Their clients lost the case, but law school professors Gary Kelder and Daan Braveman plan to argue that unless prompted by the lawsuit, the CIA would not even have responded to the Daily Orange and ultimately turned over reams of documents.

"Under the (federal) Freedom of Information Act, to recover attorney's fees, you don't have to win on all points," Braveman said.

He said there is precedent for recovery of fees "as long as the lawsuit prompted the agency to respond.

"It's an important principle," he argued. "They (the government) ought to pay if the party has to go out and litigate (to obtain a response)."

The student journalists sued the CIA after the agency delayed for at least a year a definite reply to the newspaper's Freedom of Information request for documents or information about possible CIA covert activities on campus.

But U.S. District Judge Howard G. Munson sided with the agency, which argued it was protected under an executive order from even confirming or denying the existence of covert activities.

"It's sort of an 'Alice in Wonderland,'" Braveman said. His law colleague, Professor Thomas Maroney, used identical words.

"They've (the CIA) won every time on that issue," Braveman said Thursday. "It's hard to beat the CIA in court."

Braveman said he and Kelder volunteered their time to the New York Civil Liberties Union to defend the case, which "didn't cost the Daily Orange anything." At stake is about \$5,000 in legal fees,

the SU professor estimated.

He said he expects his motion to be heard next month.

The case is apparently the only local one in recent years involving the CIA, which operates an office in Syracuse's James M. Hanley Federal Building.

The SU saga began in 1977, when the CIA received the students' initial FOIA request. It wasn't until Feb. 18, 1982 that Munson issued his summary judgment, ultimately denying the campus newspaper's request.

The newspaper tried to overturn the ruling, pointing to a case in which the Columbia University student newspaper sued the CIA

and won the right to see certain documents.

But Munson rejected the Daily Orange's argument, ruling the Columbia documents were "overt," rather than "covert."

In fact, Munson ruled the CIA had to turn over certain "overt" documents: more than 18,000 pages of research contract documents involving SU, various correspondence between SU's placement office and the CIA and several documents about the relationship between the Syracuse University Research Institute and the CIA.

Munson's ruling said the CIA's stance was justified because "either confirming or denying the existence of covert activity at SU reasonably could be expected to cause at least identifiable damage to national security," according to court papers on file at the federal courthouse.

Also among court papers was an argument in a similar case by Justice Department lawyer Daniel J. Metcalfe about the possible "chilling" effect of disclosure.

He said that for the CIA even to acknowledge the existence of covert activities at a college or university, "and for that acknowledgement to come from the CIA as distinguished from coming from an individual academic person, would have a chilling effect, a very considerable chilling effect, on the future cooperation of members of the academic community with the Central Intelligence Agency."